

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division**

UNITED STATES, et al.,)	
)	
Plaintiffs,)	
v.)	No. 1:23-cv-00108-LMB-JFA
)	
GOOGLE LLC,)	
)	
Defendant.)	

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION TO SEAL

Pursuant to Local Civil Rule 5, Plaintiffs, through their undersigned counsel, hereby respectfully submit the instant memorandum of law in support of their motion to seal certain portions of Plaintiffs' Memorandum of Law in Opposition to Google LLC's Motion to Exclude the Testimony of Dr. Timothy Simcoe ("Opposition") as well as certain exhibits attached to the same motion. The redacted portions contain information designated by Google and third parties as highly confidential or confidential under the parties' protective order (ECF No. 98 ¶ 23; ECF No. 203 (Modified Protective Order)). The unredacted brief and exhibits have been filed electronically using the sealed filing events.

INTRODUCTION

Certain portions of exhibits to Plaintiffs' Opposition references material that Google has designated as confidential or highly confidential. Pursuant to paragraph 23 of the Protective Order, through this motion Plaintiffs inform the Court of the confidentiality designations of these materials and request that the Court seal the relevant materials in order to provide Google and third parties sufficient time to provide the Court with support for the need to seal the redacted portions of the exhibit. At this time, Plaintiffs take no position on the propriety of the underlying confidentiality designations by Google or third parties.

ARGUMENT

Public access to judicial records is “protected both by the common law and the First Amendment.” *Stone v. Univ. of Md. Med. Sys. Corp.*, 855 F.2d 178, 180 (4th Cir. 1988). “The common law presumes a right of the public to inspect and copy ‘all judicial records and documents.’” *Id.* (quoting *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 597 (1978)). The common law presumption in favor of public access can be overcome only by a showing that a litigant has “some significant interest that outweighs the presumption.” *Rushford v. New Yorker Magazine, Inc.*, 846 F.2d 249, 253 (4th Cir. 1988). Accordingly, before ordering the sealing of a document, a district court must “(1) provide public notice of the request to seal and allow interested parties a reasonable opportunity to object, (2) consider less drastic alternatives to sealing the document[], and (3) provide specific reasons and factual findings supporting its decision to seal the document[] and for rejecting the alternatives.” *Ashcraft v. Conoco, Inc.*, 218 F.3d 288, 302 (4th Cir. 2000); *see also* Local Civ. R. 5(C).

Because the material was designated as confidential or highly confidential by Google and third parties, Plaintiffs have filed the present motion in accordance with their obligations under paragraph 23 of the Protective Order. As stated in the notice filed concurrently with this memorandum, any interested member of the public and any other party or non-party may indicate its position on the motion.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court maintain the redaction and sealed material in and related to Plaintiffs’ Memorandum of Law in Opposition to Google LLC’s Motion to Exclude the Testimony of Dr. Timothy Simcoe as well as certain exhibits attached to the same motion.

Dated: May 17, 2024

Respectfully submitted,

JESSICA D. ABER
United States Attorney

/s/ Gerard Mene
GERARD MENE
Assistant U.S. Attorney
2100 Jamieson Avenue
Alexandria, VA 22314
Telephone: (703) 299-3777
Facsimile: (703) 299-3983
Email: Gerard.Mene@usdoj.gov

/s/ Julia Tarver Wood
JULIA TARVER WOOD
/s/ Amanda M. Strick
AMANDA M. STRICK
/s/ Craig L. Briskin
CRAIG L. BRISKIN

United States Department of Justice
Antitrust Division
450 Fifth Street NW, Suite 7100
Washington, DC 20530
Telephone: (202) 307-0077
Fax: (202) 616-8544
Email: Julia.Tarver.Wood@usdoj.gov
Attorneys for the United States

JASON S. MIYARES
Attorney General of Virginia

/s/ Tyler T. Henry
STEVEN G. POPPS
Deputy Attorney General
TYLER T. HENRY
Assistant Attorney General

Office of the Attorney General of Virginia
202 North Ninth Street
Richmond, VA 23219
Telephone: (804) 692-0485
Facsimile: (804) 786-0122
Email: thenry@oag.state.va.us

Attorneys for the Commonwealth of
Virginia and local counsel for the
States of Arizona, California,
Colorado, Connecticut, Illinois,
Michigan, Minnesota, Nebraska, New
Hampshire, New Jersey, New York,
North Carolina, Rhode Island,
Tennessee, Washington, and West
Virginia